

**OPERATING CONTRACT
BY AND BETWEEN
RASIER, LLC AND THE CITY OF SAN ANTONIO, TEXAS**

This contract is entered into by and between the City of San Antonio, Texas, a home-rule municipal corporation ("CITY"), and Rasier, LLC ("TNC"), a Delaware limited liability company.

I. TERM

- 1.1 This contract shall commence upon execution and shall terminate nine months after the first day that TNC relaunches in San Antonio, unless the contract is terminated earlier pursuant to the provisions hereof.

II. DEFINITIONS

- 2.1 Transportation Network Company ("TNC") shall mean a person that uses an internet enabled application or digital platform to send or transmit an electronic, radio or telephonic communication through the use of a portable or handheld device, monitor, smartphone or other electronic device to connect passengers with transportation network drivers for transportation network operations.
- 2.2 Transportation Network Operation ("TNO") shall mean connecting passengers with transportation network operators for rides through a transportation network company.
- 2.3 TNC Operator shall mean a person who receives connections to potential passengers and related services from TNC in exchange for payment of a fee to TNC; and uses a personal vehicle to offer or provide a prearranged ride to passengers upon connection through the digital network controlled by TNC in return for compensation or payment of a fee.
- 2.4 TNC Vehicle shall mean a vehicle that is used by a TNC operator and is owned, leased, or otherwise authorized for use by the TNC operator.

III. AUTHORITY TO OPERATE

- 3.1 Pursuant to this contract, the CITY agrees to permit TNC to operate in the City of San Antonio, subject to the conditions and restrictions set forth herein.
- 3.2 Pursuant to Ordinance No. 2015-08-13-0684, the CITY agrees that the provisions of Chapter 33 of the CITY CODE applicable to TNCs, and Chapter 3, Division 4, and the rules and regulations developed pursuant to this chapter, will not be enforced against TNC, except as herein provided, or unless such enforcement stems solely and directly from a violation of any provisions in this contract,

IV. OPERATING FEE

- 4.1 TNC shall pay an operating fee of \$18,750.00 to the CITY within sixty calendar days of relaunching in San Antonio that will represent the required operating fee for the entire nine-month term of this agreement.

V. OPERATIONS

A. Rides

- 5A.1 TNC operators shall only accept rides booked through TNC's digital platform and shall not solicit or accept street-hails.
- 5A.2 Upon a passenger being matched with a TNC operator, the interface used by TNC to connect operators and passengers shall display for the passenger the first name and photograph of the operator and the make, model, and license plate number of the TNC vehicle.
- 5A.3 TNC shall provide a TNC operator the option to identify whether the TNC operator (1) has voluntarily undergone and passed a criminal background check as approved by the city; and (2) is a military veteran or active member of the military.
- 5A.4 TNC shall provide a means for all users of the TNC platform to report complaints to TNC. TNC shall investigate all complaints.

B. Fares

- 5B.1 TNC may offer service for compensation, no-charge, or suggested compensation. TNC shall disclose its rates used to determine any compensation or suggested compensation on its publicly accessible digital web portal.
- 5B.2 Upon completion of a trip, TNC shall transmit an electronic receipt to the passenger's e-mail address or mobile application, documenting the origination and destination of the trip and a description of the total amount paid, if any.

C. Drivers

- 5C.1 TNC operators shall (1) possess a valid state-issued driver's license; (2) possess proof of registration for their TNC vehicle; and (3) be at least twenty-one years of age.
- 5C.2 TNC operators shall possess current automobile liability insurance, as provided for herein. TNC operators shall possess proof of both the TNC operator's personal insurance

and TNC's liability insurance while serving as TNC operators. In the event of a traffic accident, TNC operators provide, on request to a peace officer or a person involved in an accident, evidence of financial responsibility by exhibiting the insurance policy. Such proof may be provided or displayed electronically.

- 5C.3 Prior to permitting a person to act as a TNC operator on its digital network, and each year thereafter, TNC shall obtain and review a criminal history research report for such person. The criminal background check shall be a national criminal background check, performed by a provider accredited by the National Association of Professional Screeners, which shall include a review of the national sex offender database. Any person who has been convicted, within the past seven years, of driving under the influence of drugs or alcohol, or who has been convicted at any time of homicide, kidnapping, any sexual offense, any assaultive offense, robbery, possession of a weapon in violation of Chapter 46 of the Texas Penal Code, violation of the Dangerous Drugs Act (Chapter 483 of the Texas Health and Safety Code), or the Controlled Substances Act (Chapter 481 of the Texas Health and Safety Code) that is punishable as a felony, or an offense under the laws of another state if the offense contains elements that are substantially similar to the elements of the specified Texas provisions, or use of a motor vehicle to commit a felony, shall not be permitted to be a TNC operator. TNC will maintain electronic records of such criminal background checks for a period of two years.
- 5C.4 Prior to permitting a person to act as a TNC operator on its digital network, and each year thereafter, TNC shall obtain and review a driving history research report for such person. Any person with more than three moving violations or a single major violation in the three-year period before the date of the driving history report shall not be permitted to be a TNC operator. As used in this section, a "major violation" includes, but is not limited to, attempting to evade the police, reckless driving, or driving on a suspended or revoked license. TNC will maintain electronic records of such driving history research reports for a period of two years.
- 5C.5 TNC shall implement a policy prohibiting TNC operators from refusing to provide service to an individual with a service animal unless the TNC operator has a medically documented condition that prevents the TNC operator from transporting animals.
- 5C.6 TNC shall establish a TNC operator training program designed to ensure that each TNC operator properly operates his vehicle. The prohibition on using taxi stands and prohibition against refusing to provide service to passengers with service animals shall be made available for TNC operators to review on the TNC website or otherwise communicated to TNC operators.
- 5C.7 TNC shall implement a zero-tolerance policy on the use of drugs or alcohol applicable to any TNC operator on the TNC platform. TNC shall provide notice to the users (1) of the zero-tolerance policy on its website and (2) of the procedures for reporting a complaint about a TNC operator the passenger reasonably suspects was under the influence of drugs or alcohol during the course of a ride. TNC shall immediately suspend a TNC operator upon receipt of a passenger complaint alleging a violation of the zero-tolerance policy. The suspension shall last the duration of the investigation.

- 5C.8 TNC shall implement a zero-tolerance policy prohibiting discrimination (on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age, or disability), harassment, or sexual harassment by any TNC operator on the TNC platform. TNC shall provide notice to the users (1) of the said zero-tolerance policy on its website and (2) of the procedures for reporting a complaint about an TNC operator the passenger reasonably believes has engaged in discrimination, harassment, or sexual harassment in conducting business as a TNC operator. TNC shall immediately suspend a TNC operator upon receipt of a passenger complaint alleging a violation of the zero-tolerance policy. The suspension shall last the duration of the investigation.

D. Insurance

- 5D.1 House Bill 1733 is a bill that was introduced during the 84th regular session of the Texas Legislature and became law on June 17, 2015, when it was signed by the governor of the State of Texas. The bill amends the Texas Insurance Code in order to establish automobile insurance requirements for TNCs and their drivers. The effective date of HB 1733 is January 1, 2016.
- 5D.2 TNC agrees that it will comply with the requirements of HB 1733 and the applicable provisions of the Texas Insurance Code, as it will be amended by HB 1733, upon execution of this contract.
- 5D.3 As soon as practicable, TNC shall provide to the CITY a certificate of insurance for the required policy, naming TNC as the insured, with an endorsement naming the CITY as an additional insured. The policy shall be accompanied by a commitment from the insurer that any provision of the policy that relates to the CITY will not be canceled, modified, or reduced in coverage without at least thirty days' prior notice to the CITY.

E. Vehicles

- 5E.1 TNC vehicles may be coupes, sedans, or light-duty vehicles, including, without limitation, vans, minivans, sport utility vehicles, hatchbacks, convertibles, and pickup trucks, that are legally permitted to operate on streets within the CITY.
- 5E.2 All TNC vehicles shall have a safety inspection conducted prior to their operation pursuant to this contract. Said inspection shall be made pursuant to a procedure approved by the CITY. No vehicle failing to pass inspection may be utilized as a TNC vehicle.
- 5E.3 The inspection shall, at a minimum, include an assessment of the following components:

1. foot brakes
2. parking brakes
3. Steering mechanism
4. windshield

5. rear window and other glass
6. windshield wipers
7. headlights
8. tail lights
9. turn indicator lights
10. top lights
11. front seat adjustment mechanism
12. doors (open, close, lock)
13. horn
14. speedometer
15. bumpers
16. muffler and exhaust system
17. condition of tires, including tread depth
18. Interior and exterior rear view mirrors
19. safety belts for operator and passengers

5E.4 TNC and TNC operators shall not use any marked taxi stands or commercial loading zones.

F. Records

5F.1 TNC shall maintain accurate and current records of all TNC operators providing TNO services through TNC.

5F.2 TNC shall maintain trip data by zip code for all trips originating within the CITY. Said data shall include both the trip origination zip code and the trip termination zip code. TNC shall provide data on the percentage of trips originating and terminating in each CITY zip code to the CITY within ten business days following the end of each of the three three-month periods occurring during the term of this contract and within ten business days of the effective date of the termination of this contract. Said data shall be treated as confidential by the CITY.

5F.3 The release by the CITY of records or information disclosed to the CITY by TNC in response to an open records request for is governed by Chapter 552 of the Texas Government Code. The release by the CITY of records or information disclosed to the CITY by TNC in response to a subpoena or court order is governed by state or federal law. In the event that information provided by TNC to the CITY pursuant to this contract is sought through an open records request, a subpoena, or a court order, the CITY shall promptly notify TNC of such open records request, subpoena, or court order, so as to afford TNC the opportunity to take actions to prevent disclosure.

G. Airport

5G.1 For each trip originating at the San Antonio International Airport (the "Airport"), TNC shall pay \$1.00 to the CITY. TNC shall make said payment to the CITY within ten

business days following the end of any calendar month during the term of this contract and within ten business days of the effective date of the termination of this contract.

- 5G.2 In lieu of decals, transponders or additional regulatory or technological measures, TNC shall establish a geo-fence or other instrument which allows it to identify any trips originating at the San Antonio International Airport. TNC shall provide the CITY a monthly report containing an itemization of trips originating at the San Antonio International Airport, including date.

H. Inspections

- 5H.1 The CITY shall provide TNC with the names of CITY inspectors. The CITY inspectors shall conduct no more than 10 inspections per month during the term of this contract. TNC agrees to ensure that the passenger accounts of any CITY inspectors remain open, unless the inspectors engage in misconduct that goes beyond the lawful exercise of the inspector's duties and responsibilities. Such inspector accounts shall remain open during the term of this contract with no notice to drivers that the account belongs to a city inspector. TNC shall provide the CITY with a coupon code, or similar medium, that permits CITY inspectors to take a secret-shopper ride without charge for the purpose of conducting inspections during the term of this contract, with such coupon code or similar medium to provide no notice to drivers that the passenger is a city inspector.

I. Agent

- 5I.1 TNC shall designate an agent whose place of work is located within the State of Texas.
- 5I.2 Upon execution of this contract, TNC shall provide to the CITY the name, telephone number, facsimile number (if any), e-mail address, physical address, and office hours of its agent.

J. Town Hall

- 5J.1 TNC agrees to participate in two town hall meetings organized by the CITY.

VI. TERMINATION

- 6.1 For purposes of this contract, "termination" of this contract shall mean termination by expiration of the contract term, as set out in Article I, or earlier termination pursuant to any of the provisions of this contract.
- 6.2 TNC or the CITY may terminate this contract upon thirty days' written notice to TNC or the CITY for any reason, in its sole discretion.

- 6.2 Should CITY terminate this contract prior to the expiration of its term, the CITY shall reimburse TNC a pro rata amount of its operating fee for the period during which TNC was precluded from operating pursuant to this contract.

VII. LICENSES AND CERTIFICATIONS

- 7.1 All licenses, legal certifications, or inspections required for the services, facilities, equipment, or materials and all applicable state and federal laws and local ordinances, except as otherwise provided for in this contract, must be complied with by TNC. Failure to comply with this requirement may result in termination of this contract.

VIII. NON-EXCLUSIVE CONTRACT

- 8.1 TNC acknowledges that this contract does not invest in TNC the exclusive right to provide TNO services in the City of San Antonio during the term of this contract.

IX. NON-WAIVER

- 9.1 Unless otherwise specifically provided for in this contract, a waiver by either party of a breach of any of the terms, conditions, covenants, or guarantees of this contract shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant, or guarantee herein contained. Further, any failure of either party to insist in any one or more cases upon the strict performance of any of the covenants of this contract, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification, or discharge by either party hereto of any provision of this contract shall be deemed to have been made or shall be effective, unless expressed in writing and signed by the party to be charged. No act or omission by a party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

X. INDEMNIFICATION

- 10.1 TNC covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage (collectively "CLAIMS"), made upon the CITY directly or indirectly arising out of, resulting from or related to TNC'S violation of this Contract, including any violation attributable to any agent, officer, director, representative, employee, consultant or subcontractor of TNC, and their respective officers, agents employees, directors and

representatives while in the exercise of the rights or performance of the duties under this Contract. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence or intentional misconduct of CITY, its officers or employees. IN THE EVENT TNC AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

- 10.2 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. The parties shall advise each other in writing within 24 hours of any claim or demand against either party that it reasonably believes are covered by TNC's INDEMNITY obligations hereunder. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving TNC of any of its obligations under this paragraph.
- 10.3 Defense Counsel - TNC shall retain the right to select defense counsel in fulfilling its obligation hereunder to defend and indemnify CITY, unless such right is expressly waived by TNC in writing. CITY shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense.
- 10.4 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of TNC, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for TNC or any subcontractor under worker's compensation or other employee benefit acts.
- 10.5 It is expressly understood and agreed that TNC is and shall be deemed to be an independent contractor and operator responsible to all parties for its respective acts or omissions and that CITY shall in no way be responsible therefor.

XI. CHANGES AND AMENDMENTS

- 11.1 Except when the terms of this contract expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be by amendment in writing executed by both the CITY and TNC.
- 11.2 It is understood and agreed by the parties hereto that changes in local, state, and federal rules, regulations, or laws applicable hereto may occur during the term of this contract and that any such changes shall be automatically incorporated into this contract without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation, or law.

XII. ENTIRE CONTRACT

- 12.1 This contract and its exhibits constitute the final and entire contract between the parties hereto and contain all of the terms and conditions agreed upon. No other contracts, oral or otherwise, regarding the subject matter of this contract shall be deemed to exist or to bind the parties hereto unless same be in writing, dated subsequent to the date hereof, and only executed by the parties.

XIII. SEVERABILITY

- 13.1 If any clause or provision of this contract is held invalid, illegal, or unenforceable under present or future federal, state, or local laws, including, but not limited to, the CITY charter, CITY CODE, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality, or unenforceability shall not affect any other clause or provision hereof and that the remainder of this contract shall be construed as if such invalid, illegal, or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this contract that is invalid, illegal, or unenforceable, there be added as a part of the contract a clause or provision as similar in terms to such invalid, illegal, or unenforceable clause or provision as may be possible, legal, valid, and enforceable.

XIV. NOTICES

- 14.1 For purposes of this contract, all official communications and notices between the parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

CITY

Assistant Police Director
San Antonio Police Department
315 S. Santa Rosa
San Antonio, Texas 78207

TNC

Christopher Nakutis, General Manager
Uber Technologies, Inc.
400 W. 15th Street, Suite 200
Austin, Texas 78701

XV. LAW APPLICABLE

- 15.1 THIS CONTRACT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.
- 15.2 VENUE AND JURISDICTION FOR ANY LEGAL ACTION OR PROCEEDING BROUGHT OR MAINTAINED, DIRECTLY OR INDIRECTLY, UNDER OR IN

CONNECTION WITH THIS CONTRACT SHALL LIE EXCLUSIVELY IN BEXAR COUNTY, TEXAS.

XVI. LEGAL AUTHORITY

- 16.1 The signer of this contract for TNC represents, warrants, assures, and guarantees that he has full legal authority to execute this contract on behalf of TNC and to bind TNC to all of the terms, conditions, provisions, and obligations herein contained.

XVII. PARTIES BOUND

- 17.1 This contract shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns, except as otherwise expressly provided for herein.

XVIII. CAPTIONS

- 18.1 The captions contained in this contract are for convenience of reference only and in no way limit or enlarge the terms and/or conditions of this contract.

EXECUTED IN DUPLICATE ORIGINALS on October 13, 2015.

CITY OF SAN ANTONIO

RASIER, LLC

Sheryl Sculley

Karen Walker

Sheryl Sculley.
City Manager

Karen Walker
Manager

APPROVED AS TO FORM:

Martha G. Sepeda

Martha G. Sepeda
Acting City Attorney

ATTEST:

Leticia M. Vacek

Leticia M. Vacek
City Clerk

October 13, 2015

Date

